shall have occasion to make use of." *Held,* that the right of compensation for the use of a wall was an easement appurtenant to the land of the first builder which passed to his grantee on a conveyance of the land. *Pfrommer* v. *Taylor,* (Del. 1913) 86 Atl. 212.

The decision as to whether the right to compensation for the use of a party-wall by an adjoining owner is a personal right in the builder of the party-wall or is a right running with the land, may be put in two classes: first, those depending on the express terms of the party-wall agreement, and second, those depending on the obligation imposed by a municipal ordinance or building regulation as in the principal case. As to the former there is a a complete conflict in the authorities; 10 MICH. L. REV. 187, and note to *Cook* v. *Paul,* (Neb. 1903) in 66 L. R. A. 673. A building regulation in language almost identical with that in the principal case was passed by the Provincial Assembly in Pennsylvania in 1721. Under this regulation it was held that compensation for the use of a party-wall was personal to the builder. *Todd* v. *Stokes,* 10 Pa. St. 155: *Gilbert* v. *Drew,* 10 Pa. St. 219. In 1849 the Pennsylvania legislature passed an act providing that the right of compensation for the use of a party-wall passed to the builder's grantee unless otherwise expressed. *Knight* v. *Beenken,* 30 Pa. St. 372; *Voight* v. *Wallace,* 179 Pa. St. 520. Cases directly in accord with the rule in the principal case are *Halpine* v. *Barr,* 21 D. C. 331; *Irwin* v. *Peterson,* 25 La. Ann. 300; *Thomson* v. *Curtis,* 28 Ia. 229; *Hunt* v. *Armbruster,* 17 N. J. Eq. 208.

SALES—INDEFINITENESS OF SUBJECT MATTER OF CONTRACT.—The defendant automobile manufacturing company made plaintiff its selling agent in certain territory, and agreed to supply cars at a certain discount, the plaintiff in return agreeing to order at least fifty cars. There were different priced models, and the plaintiff had the privilege of choosing from them in any proportion. The defendant, after filling a few orders, declined to deliver any more automobiles. *Held,* in an action for damages, that the agreement did not constitute a contract for the sale of any particular kind of automobiles, as there was no meeting of minds upon the models or prices of the particular cars to be sold. *Oakland Motor Car Company* v. *Indiana Automobile Company,* 201 Fed. 499.

Wheaton v. *Cadillac Automobile Company,* 143 Mich. 21 is to the same effect. But such a contract is not too indefinite if past dealings between the same parties make is reasonably certain what the buyer would order. *Hardwick* v. *American Can Co.,* 113 Tenn. 657. And in the case of *George Delker Co.* v. *Hess Spring & Axle Company,* 138 Fed. 647, the buyer having contracted to buy 2,500 sets of axles (of different sizes and prices) expressly agreed to specify monthly for a minimum quantity. His failure to specify for the goods was held a breach. The express agreement to specify does not seem sufficient to distinguish the cases, since if the buyer agrees to take a certain number of articles made in different sizes or styles, it should be his duty to give a definite order anyway. Such contracts have been sustained in the absence of an express agreement to specify for the goods. An agree-

ment to buy a certain number of scales, which were made in various styles at different prices, was held valid in *Kimball Bros.* v. *Deere, Wells & Co.*, 108 Ia. 676. A contract to sell 750 tons of salt bound the seller, although the buyer had the privilege of choosing from various goods at different prices per ton in *Mebius & Drescher Co.* v. *Mills*, 150 Cal. 229. A contract to saw out and sell from 500,000 to 1,000,000 feet of lumber was binding, although the price per thousand depended on the kind of timber, and the probable amount or proportion of each kind was uncertain, in *American Hardwood Lumber Company* v. *Dent*, 164 Mo. App. 442. The point of indefiniteness does not seem to have been raised in *Alden* v. *Kaiser*, (Minn. 1913) 140 N. W. 343, where the agreement was to buy five automobiles, to be ordered from different priced models and styles. The problem of ascertaining the damage is met by assuming that the party with the privilege of selection would have chosen the goods on which the other party would have made the least profit. *George Delker Co.* v. *Hess, supra; Kimball Bros.* v. *Deere, supra; American Hardwood Co.* v. *Dent, supra.* There is, however, a *dictum* that the latter party may exercise the option for the purpose of estimating the damages, and make the contract for the goods on which he would have made the greatest profit. *Mebius & Drescher Co.* v. *Mills, supra.*

TRIAL—THE EFFECT OF INCONSISTENT SPECIAL FINDINGS.—Plaintiff sued for injuries sustained while he was engaged in unloading slabs of marble for the defendants. He alleged that the defendants were negligent in failing to provide a sufficient force of men to handle the marble. The jury returned a general verdict for the plaintiff, and made a number of special findings. One of the special findings as to the defendant's negligence was inconsistent with other special findings, and with the general verdict. The court *held* that a new trial should have been granted. *Willis* v. *Skinner et al.* (Kan. 1913) 130 Pac. 673.

When special findings are inconsistent with each other, of course no judgment can be rendered on them, and the trial judge must either render judgment on the general verdict, or grant a new trial. The cases are in conflict as to which he should do. In Colorado it has been held that "contradictory and inconsistent special findings destroy each other, and the general verdict stands." *Drake* v. *Justice Gold Mining Co.*, 32 Colo. 259, 75 Pac. 912. Indiana takes the same view. *Shuck* v. *State*, 136 Ind. 63, 35 N. E. 993; *Hereth* v. *Hereth*, 100 Ind. 35; *Dickel* v. *Shirk*, 128 Ind. 178, 27 N. E. 733; *C. & E. I. Rr. Co.* v. *Ostrander*, 116 Ind. 259, 15 N. E. 227; *Byram* v. *Galbraith*, 75 Ind. 134. There is *dictum* in Michigan and in Iowa to the same effect. *Burke* v. *Bay City Traction & Electric Co.*, 147 Mich. 172, 110 N. W. 524; *Foster* v. *Gaffield*, 34 Mich. 356; *Fishbaugh* v. *Spunaugle*, 118 Iowa, 337, 92 N. W. 58. A contrary rule is well established in Kansas, and it is there held that where special findings are inconsistent a new trial should be granted. *St. L. & S. F. Ry. Co.* v. *Bricker*, 61 Kan. 224, 59 Pac. 268; *Latshaw* v. *Moore*, 53 Kan. 234, 36 Pac. 342. It would seem that the Kansas rule is the more logical. The court in the principal case, in applying that rule, said of inconsistent special findings, that they "leave the matter in such uncertainty